

FOREWORD*

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Perhaps it is to be expected that the twentieth anniversary of the National Labor Relations Board should have been the occasion for an unusual array of contributions to legal periodicals. As is well known, it takes many months to inspire articles, many more to organize a group into a continuity on various aspects of a single topic. It is therefore an interesting commentary on the like-mindedness of student boards and faculty advisors that so much writing should have been generated so suddenly at the same time on the same subject.

There is little, however, that is noteworthy in merely the lapse of a score of years. This alone would hardly have occasioned such a spate of materials by an array of talent that represents many of our foremost authorities in the field. Nor can it be explained alone by the controversial interplay of large economic groups that have so characterized the party litigants before the Labor Board. The explanation lies more, I venture to say, in the widespread belief that Board policies over these twenty years have responded in an unusual degree to the many shifts in personnel and to the economic and political forces that have dominated the national scene.

The principal motivation behind the present symposium is thus in a sense inquisitive, speculative. Is there or is there not a measure of truth in this widespread belief of the Board's responsiveness? If so, is this good or bad? If not, is that good or bad?

Driven by this spirit of inquiry we have prepared a chronology of those events which have impressed us as offering the largest possibility of relevance to the trends in Board policy. These are events that are conventionally considered extrinsic to the formulation of doctrine. They constitute an inventory of the sort of facts which lawyers of one school regard as inappropriate and irrelevant to decision-making, and which those of another view as vital and inevitable factors in the formulation of policy. The reader may feel moved by a curiosity that is more than idle to inquire what these events may be, what economic or political facts, what changes in national administration, or in incumbency of the Board or its General Counsel occurred at some reasonable interval in advance of a shift in Board policy. This chronology has been printed as a diverting offering for his speculation.

Limitations of space have permitted only four specific topics, plus an over-all commentary on each of them. Many may quarrel with the selection of issues, but to us these four seem to provide evidence more

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than others of what may be called meanderings in the course of Labor Board law.

It is one thing, however, to note that certain issues have experienced these meanderings more than others; it is another to identify with skillful accuracy the exact point and extent of each swing in the stream-bed to left or right. By far the most difficult, however, is the determination of the why and wherefore of each such swing. *Post hoc ergo propter hoc* has long been one of man's plaguing fallacies. The *post* is within the competence of any good observer, but the *propter* can be determined, if at all, by one with only the shrewdest of insight.

We are happy in our selection of authors. They are already known for such insight. Since only in occasional instances has any of them ventured his opinion that the extrinsic events set forth in our chronology have in any respect accounted for shifts in Board policy, we are compelled to infer that it is their view by and large that the oft-expressed belief in the responsiveness of the Board to these extrinsic factors has only small basis in fact.

We are also happy that we have attained some measure of balance in the experience and orientation of our writers. Mr. Forkosch is a practitioner, teacher and distinguished writer; Mr. Van Arkel was the Board's General Counsel during 1946-47, and is now in practice in Washington; Mr. Wollett, formerly attorney with the Wage Stabilization Board, is a teacher and writer, and his collaborator, Mr. Rowen, now in practice in Seattle was at one time Assistant to the Chairman, WSB; Miss Humphrey, formerly Chief Law Officer in three of the Board's Regional Offices successively, was later Chairman, National Enforcement Commission, WSB, thereafter was a partner in labor law practice with the late Robert Denham, who was himself General Counsel of this Board during 1947-1950's. Judge Madden, presently on the United States Court of Claims, is nationally known for his distinguished and lasting contribution as the first chairman of the Board during its pioneering and most controversial period.

Little need be said about the subject matter or treatment of the first four articles. They explain themselves most ably. The fifth, Judge Madden's article, gives a valuable historical picture of the predicament of organized labor in the pre-Wagner Act days, the difficulties which the Board faced in its first two years,—doubts as to constitutionality and opposition of management and a large group of the organized bar,—of the early period of constructive policy making, once these difficulties had been overcome, and of the resulting processes of adjustment as compliance increased. Judge Madden offers his opinion that the four preceding papers, interesting as they are, relate to "refinements of a structure which has undergone no essential change since it was built." His specific comments on the thesis of each paper will be left for the reader to enjoy in the author's own words; but his final observation coming from so experienced

an authority is of more than ordinary interest. "I do not find" he says, "any considerable evidence that this law, in action, has been swayed by the political or economic outlook of its administrators."

Legal writing has been directed traditionally to analysis and comparison of doctrine, summation of trends and extrapolation into the future. In the case of Labor Board law there has been a more than ordinary recourse to the identification of that illusive creature, Congressional intent. But in the last generation there has been a notable tendency to conclude this process with an interpretation in terms of policy and of the events and forces that have shaped it. It is hoped that this symposium will add its measure of contribution along each of these lines of approach. Particularly, however, we are here engaged in an effort to shift emphasis from logic to policy, and from policy to a frank appraisal of whether its formulation is traceable to occurrences which have been traditionally excluded from processes that are strictly logical. Our writers have been alerted to this. We hope that our readers, as we have, will find their analyses and conclusions of significant interest.